

## ARTICLE 40-02

### ARCHAEOLOGY AND HISTORIC PRESERVATION

#### Chapter

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40-02-02	Permit for Cultural Resource Investigation
40-02-03	Protection of Prehistoric and Historic Human Burial Sites, Human Remains, and Burial Goods

#### CHAPTER 40-02-01

#### STATE HISTORIC SITES REGISTRY

#### Section

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**40-02-01-01. Definitions.** The terms used throughout this title have the same meaning as in North Dakota Century Code chapter 55-10, except:

1. "Board" means the state historical board as defined in North Dakota Century Code section 55-01-01.
2. "Criteria" means the written standards used by the board to determine that a site possesses historical value as defined in North Dakota Century Code section 55-10-02.
3. "Division" means the division of archaeology and historic preservation of the state historical society as defined in North Dakota Century Code section 55-01-01.
4. "Meeting" means an officially called meeting of the board as defined in North Dakota Century Code section 55-01-03.
5. "Nomination" means a written statement describing the physical condition and historical value of a property.
6. "Originator" means the individual who prepared the nomination.

7. "Petition" means a written statement describing a property's loss of historical value.
8. "Registry" means the state historic sites registry as defined in subsection 4 of North Dakota Century Code section 55-10-02.
9. "Committee" means the committee on archaeology and historic preservation of the board as defined in North Dakota Century Code section 55-01-01.
10. "Superintendent" means the superintendent of the state historical board of North Dakota as defined in North Dakota Century Code section 55-02-01.

**History:** Effective July 1, 1982; amended effective March 1, 1986.

**General Authority:** NDCC 28-32-01, 28-32-02

**Law Implemented:** NDCC 55-10-02(4), 55-10-10

**40-02-01-02. Relationship between registry and national register of historic places.** The registry should not be confused with the National Register of Historic Places. A property listed in the registry may also, but will not necessarily, be listed or determined eligible for listing in the National Register of Historic Places. Only when registry properties are also listed or determined eligible for listing in the National Register of Historic Places do the federal programs or regulations related to such listing apply to registry properties.

**History:** Effective July 1, 1982.

**General Authority:** NDCC 28-32-01, 28-32-02

**Law Implemented:** NDCC 55-10-02(4)

**40-02-01-03. Criteria for listing properties in the registry.** The state historical board shall consider historic and prehistoric sites, structures, buildings, objects, neighborhoods, networks, and cultural landscapes eligible for inclusion in the registry if it can be demonstrated that:

1. They have been associated with and now illustrate, recall, or characterize one or more of the following:
  - a. Individuals;
  - b. Groups;
  - c. Events;
  - d. Processes;
  - e. Institutions;
  - f. Movements;

- g. Lifeways;
- h. Folkways;
- i. Ideals;
- j. Beliefs; or
- k. Other patterns or phenomena

that had a significant influence on or are important reflections of the prehistoric or historic development or identity of the state, or of a region, community, or cultural group within the state, or;

- 2. They are distinctive or they distinctively illustrate one or more of the following:
  - a. Architectural styles;
  - b. Building types;
  - c. Types or methods of construction;
  - d. Vernacular, popular, or traditional building design;
  - e. Landscape architecture;
  - f. Urban design or planning;
  - g. Works of significant architects, designers, builders, or planners;
  - h. Monumental sculpture; or
  - i. Industrial, technological, or engineering design, or other architectural, aesthetic, or engineering expressions

that characterize, are unique to, possess special artistic or aesthetic values for, or had an important influence on the historic or prehistoric community, or cultural group for which they were created, or;

- 3. They contain information about or evidence of one or more of the following historic or prehistoric:
  - a. Events;
  - b. Processes;
  - c. Institutions;

- d. Design;
- e. Construction;
- f. Settlement;
- g. Migration;
- h. Ideals;
- i. Beliefs;
- j. Lifeways; or
- k. Folkways, or other facets of development and cultural systems

that are known or established likely to be important to professional or public knowledge or understanding of earlier cultures or cultural systems or of the development of the state or of regions or communities within the state, and;

- 4. They possess integrity of form, material, and setting, generally retaining those historic characteristics such as:
  - a. Physical features;
  - b. Evidence of workmanship;
  - c. Fabric;
  - d. Location; and
  - e. Surroundings

that convey, support, represent, or contain values and qualities for which they are judged significant.

**History:** Effective July 1, 1982; amended effective March 1, 1986.

**General Authority:** NDCC 28-32-01, 28-32-02

**Law Implemented:** NDCC 55-10-02(4)

**40-02-01-04. Documentation of significance.** Any state agency, department, municipality, county, school district, or other governmental subdivision or private organization or individual may prepare and submit nominations of properties to the registry. All nominations prepared shall be submitted to the division. It is the division's responsibility to review all nominations to assure that they contain adequate documentation upon which the board makes decisions. Nominations which are not adequately documented are returned within fifteen

days of receipt with an explanation of deficiencies, and no further action is taken until adequate documentation is provided. Adequate documentation includes:

1. Name and address of the originator and the organization, institution, or governmental entity, if any, which requested or directed the nomination to be prepared.
2. Legal boundary description of the property.
3. Physical description of the property.
4. Explanation of the physical changes made to the property and when such changes occurred.
5. Statement of historic, architectural, archaeological, cultural, or other significance which indicates the property meets the criteria.
6. Eight-inch by ten-inch [20.32-centimeter by 25.4-centimeter] black and white photographs of the property, both interior and exterior if the property is a building, as necessary and appropriate to provide accurate evidence of its existing condition. In the case of properties covering an extremely large area, an aerial photo series, composite aerial photographs, or other method of photo documentation necessary to illustrate existing conditions are acceptable in lieu of, or in addition to, eight-inch by ten-inch [20.32-centimeter by 25.4-centimeter] black and white photographs.
7. Names and addresses of property owners of record.

**History:** Effective July 1, 1982.

**General Authority:** NDCC 28-32-01, 28-32-02

**Law Implemented:** NDCC 55-10-02(4)

**40-02-01-05. Notification of pending review.** The division provides notification not less than sixty days prior to the meeting at which the property is reviewed. The board will not review nominations submitted unless the notification procedures outlined in this section have been followed.

1. Notification is made as follows:
  - a. Written notification by registered mail to the private property owners.
  - b. For state-owned properties, written notification by registered mail to the state agency head having jurisdiction over the property.
  - c. For properties occupied but not owned by the state, written notification to the state agency head occupying the property.

- d. Written notification to the chief elected official of the political jurisdiction in which the property is located.
- e. News releases sent to a wire service in the state and to at least one newspaper of general circulation in the area in which the property is located.

2. Notification information includes:

- a. Name of the property.
- b. Legal boundary description of the property except that archaeological properties will be located only by range, township, and section.
- c. A summary statement of the property's significance.
- d. Invitation to attend the meeting at which the property is reviewed.
- e. Invitation to provide written comments in support of or opposition to the nomination.
- f. The place, date, and time of the meeting.
- g. A concise statement of the legal implications of registry listing.
- h. Name and address of the originator and the organization, institution or governmental entity, if any, which requested or directed the nomination to be prepared.

**History:** Effective July 1, 1982; amended effective March 1, 1986.

**General Authority:** NDCC 28-32-01, 28-32-02

**Law Implemented:** NDCC 44-04-19, 44-04-20

**40-02-01-06. Procedures for reviewing nominated properties.**

Procedures include:

- 1. Mailing by the division to the board of the nomination not less than ten days prior to each meeting.
- 2. Review of the nomination by the committee prior to the meeting.
- 3. Recommendations by the committee to the board regarding each property being nominated. Recommendations fall into one of the following categories:
  - a. Recommend for inclusion in the registry.

- b. Not recommended for inclusion in the registry.
  - c. Return nomination to the originator for further research or additional information.
  - d. Recommend for inclusion with qualifications. Qualifications will ordinarily be limited to changes in boundary definition.
4. The board provides any person in attendance at the meeting an opportunity to comment upon the nominations under consideration.
  5. At the request of the committee, members of the division staff attend the meeting to answer questions.
  6. The board may accept, reject, or amend committee recommendations, but shall vote on each nomination presented during the meeting, except that any nominations presented but not voted upon due to the lack of a quorum of voting members shall be presented to the board at its next scheduled meeting and reviewed and acted upon prior to any more recently received nomination.
  7. Nominations of properties returned by board action to the originator for further research, additional information, or changes in boundary definition shall, if resubmitted, be considered new nominations and subject to all procedures outlined in this chapter.

**History:** Effective July 1, 1982.

**General Authority:** NDCC 28-32-01, 28-32-02, 44-04-19

**Law Implemented:** NDCC 55-10-02(4), 55-10-10

**40-02-01-07. Notification of action taken.** Not more than fifteen days following board action on a nomination, the division shall provide written notification of action taken to those property owners, governmental officials, and to the general public as outlined in subsection 1 of section 40-02-01-05.

**History:** Effective July 1, 1982; amended effective March 1, 1986.

**General Authority:** NDCC 55-02-01

**Law Implemented:** NDCC 55-10-02(4)

**40-02-01-08. Publication and distribution.** No later than January 31, 1986, the society shall publish and distribute the North Dakota State Historic Sites Registry, and shall annually thereafter publish, as necessary, any updates to that publication. The publication must, at a minimum, include:

1. A list of all properties in the registry as of the last day of the November preceding.
2. A brief statement of the significance of each property listed.

3. The location of each property, except that archaeological properties will be located only by range, township, and section.
4. The portions of the North Dakota Century Code and of the board's policies and procedures relating to the registry.

**History:** Effective July 1, 1982; amended effective March 1, 1986.

**General Authority:** NDCC 55-10-02

**Law Implemented:** NDCC 54-24-09, 55-10-02(4)

**40-02-01-09. Removal of properties from registry.** The board may remove properties from registry listing when the features or characteristics for which the property was determined to meet the criteria have been substantially lost or destroyed. The requirements for documentation, review, and action taken are substantively the same whether the board initiates removal proceedings or whether removal proceedings have been initiated by petition. Petition for removal can be made by any state agency, department, municipality, county, school district, or other governmental subdivision or private organization or individual by submitting an adequately documented petition to the division. Petitions which are not adequately documented are returned within fifteen days of receipt with an explanation of deficiencies, and no further action is taken until adequate documentation is provided.

1. Adequate documentation includes:
  - a. Names and addresses of the petitioners.
  - b. Name of the property and its legal boundary description as listed in the registry.
  - c. Description of any physical changes made to the property after its listing in the registry.
  - d. Eight-inch by ten-inch [20.32-centimeter by 25.4-centimeter] black and white photographs of the property, both interior and exterior if the property is a building, sufficient to illustrate physical changes made after its listing in the registry. In the case of properties covering an extremely large area an aerial photo series, composite aerial photographs, or other method of photo documentation necessary to illustrate changes are acceptable in lieu of, or in addition to, eight-inch by ten-inch [20.32-centimeter by 25.4-centimeter] black and white photographs.
  - e. Names and addresses of property owners of record.
  - f. Statement of why the property no longer meets the criteria upon which its listing in the registry was based.



2. Procedures following receipt by the division of an adequately documented petition include:

- a. Review of the petition by the board at its first meeting held not less than ninety days following receipt of the petition by the division.
- b. Not less than sixty days prior to the meeting at which the board reviews the petition the division notifies in writing the petitioner, originator, property owner, and the chief elected official of the political jurisdiction in which the property is located of the substance of the petition, the place, date, and time of the meeting, and invites their written comment and attendance at the meeting.
- c. Not less than sixty days prior to the meeting at which the board reviews the petition the division submits a news release outlining the substance of the petition to a wire service in the state and to at least one newspaper of general circulation in the area in which the property is located.
- d. Not less than ten days prior to the meeting at which the board reviews the petition the division mails the petition to the board.
- e. The committee makes recommendations to the board regarding action to be taken on the petition.

Recommendations fall into one of the following categories:

- (1) Removal of the property from the registry.
  - (2) Continued listing of the property on the registry.
  - (3) Return petition to the petitioner for additional information.
- f. The board allows any person in attendance at the meeting an opportunity to comment upon the petition under consideration.
  - g. The board shall vote on each petition presented during the meeting, except that any petition presented but not voted upon due to the lack of a quorum of voting members shall be presented to the board at its next scheduled meeting and reviewed and acted upon before taking action on any more recently received petition.
  - h. Petitions returned by board action to the petitioner for additional information shall, if resubmitted, be considered new petitions and subject to all procedures set forth in section 40-02-01-09.
  - i. Not more than fifteen days following board action on a petition the division shall provide written notification of action taken to the petitioner, originator, property owner, chief elected official, a wire

service in the state, and one newspaper of general circulation in the area in which the property is located.

**History:** Effective July 1, 1982; amended effective March 1, 1986.

**General Authority:** NDCC 55-10-10

**Law Implemented:** NDCC 55-10-02(4), 55-10-10

**40-02-01-10. Alteration or demolition of registry properties.** Any state department or agency or any city, county, school district, or other body corporate and politic must notify the superintendent of, and receive the superintendent's written approval for, any of the governmental bodies' proposed actions which would result in the alteration or demolition of registry properties.

1. Notification to the superintendent shall include:
  - a. Name and address of the property.
  - b. A description of the proposed action.
  - c. Reasons for proposing the action.
  - d. A copy of any building inspector, fire marshal, workmen's compensation bureau, planning department, or other official inspection or planning report which forms the basis for proposing the action.
  - e. An assessment of all alternatives considered in reaching the decision to propose alteration or demolition, and the reasons for rejecting those alternatives.
  - f. A copy of any supporting documentation, such as architect's plans and specifications, which graphically explains the result of the proposed action if approved by the superintendent.
2. Proposed alterations which would not, in the superintendent's opinion, jeopardize the property's registry status may be approved by independent action of the superintendent.
3. The superintendent shall notify the board of any proposed demolition of a registry property, and of any proposed alteration of a registry property if such alteration would result in the alteration to or destruction of those features or characteristics for which the property was determined to meet the criteria. The superintendent shall schedule board review of such proposed demolition or alteration at any regular meeting of the board which is held not later than one hundred fifty days after the superintendent's receipt of notification of proposed demolition or alteration. The superintendent shall notify the governmental body proposing alteration or demolition of the date, time, and place of board review, but immediately shall initiate any studies, inspections,

meetings, and negotiations with that governmental body in order to identify and implement any reasonable alternatives to alteration or demolition of the property.

**History:** Effective March 1, 1986.

**General Authority:** NDCC 55-10-08(1), 55-10-08(2)

**Law Implemented:** NDCC 55-10-08(2)